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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

ESTATE OF GABRIELA JIMENEZ, by and through its Personal Representative ELLEN DELGADO,

Plaintiff,

v.

VIGILNET AMERICA LLC; LMG HOLDINGS, INC. doing business as SCRAM SYSTEMS; WASHINGTON COUNTY; WASHINGTON COUNTY COMMUNITY CORRECTIONS; WASHINGTON COUNTY SHERIFF'S OFFICE; WASHINGTON COUNTY CIRCUIT COURT; OREGON JUDICIAL DEPARTMENT; and STATE OF OREGON; DOES 1 - 10,

Defendants.

Civil No. 3:24-cv-00678-JR

DEFENDANT VIGILNET AMERICA LLC'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT

DEMAND FOR JURY TRIAL

HON. JOLIE A. RUSSO

For its Answer and Affirmative Defenses to Plaintiff Estate of Gabriela Jimenez's ("Plaintiff") Complaint, Defendant Vigilnet America LLC ("Vigilnet") admits, denies and alleges as follows:

JURISDICTION AND VENUE

1.

Answering the allegations in Paragraph 1 of Plaintiff's Complaint, the allegations call for a legal conclusion such that no response is required. To the extent a response is deemed required, Vigilnet admits that this Court has jurisdiction.

2.

Answering the allegations in Paragraph 2 of Plaintiff's Complaint, the allegations call for a legal conclusion such that no response is required. To the extent a response is deemed required, Vigilnet admits that this Court has jurisdiction.

3.

Answering the allegations in Paragraph 3 of Plaintiff's Complaint, on information and belief Vigilnet admits that the alleged events and transactions that form the basis of Plaintiff's Complaint are alleged to have occurred in the District of Oregon. Except as admitted, Vigilnet denies the remaining allegations in Paragraph 3.

4.

Answering the allegations in Paragraph 4 of Plaintiff's Complaint, on information and belief Vigilnet admits that the alleged events and transactions that form the basis of Plaintiff's Complaint are alleged to have occurred in the Portland Division. Except as admitted, Vigilnet denies the remaining allegations in Paragraph 4.

5.

Answering the allegations in Paragraph 5 of Plaintiff's Complaint, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet admits

that it received notice of Plaintiff's claims on or around February 14, 2023. Except as admitted, Vigilnet denies the allegations in Paragraph 5.

PARTIES

6.

Answering the allegations in Paragraph 6 of Plaintiff's Complaint, the allegations are not directed at Vigilnet such that no response is required. To the extent a response is deemed required, Vigilnet is without sufficient information to either admit or deny the allegations and on that basis denies the allegations.

7.

Answering the allegations in Paragraph 7 of Plaintiff's Complaint, Vigilnet admits that it is a company which provides electronic monitoring services to various government agencies involved in the criminal justice system. Except as admitted, Vigilnet denies the allegations in paragraph 7.

8.

Answering the allegations in Paragraph 8 of Plaintiff's Complaint, the allegations are not directed at Vigilnet such that no response is required. To the extent a response is deemed required, Vigilnet is without sufficient information to either admit or deny the allegations and on that basis denies the allegations.

9.

Answering the allegations in Paragraph 9 of Plaintiff's Complaint, the allegations are not directed at Vigilnet such that no response is required. To the extent a response is deemed required, Vigilnet is without sufficient information to either admit or deny the allegations and on that basis denies the allegations.

10.

Answering the allegations in Paragraph 10 of Plaintiff's Complaint, the allegations are not directed at Vigilnet such that no response is required. To the extent a response is deemed required,

Vigilnet is without sufficient information to either admit or deny the allegations and on that basis denies the allegations.

11.

Answering the allegations in Paragraph 11 of Plaintiff's Complaint, the allegations are not directed at Vigilnet such that no response is required. To the extent a response is deemed required, Vigilnet is without sufficient information to either admit or deny the allegations and on that basis denies the allegations.

12.

Answering the allegations in Paragraph 12 of Plaintiff's Complaint, the allegations are not directed at Vigilnet such that no response is required. To the extent a response is deemed required, Vigilnet is without sufficient information to either admit or deny the allegations and on that basis denies the allegations.

13.

Answering the allegations in Paragraph 13 of Plaintiff's Complaint, the allegations are not directed at Vigilnet such that no response is required. To the extent a response is deemed required, Vigilnet is without sufficient information to either admit or deny the allegations and on that basis denies the allegations.

14.

Answering the allegations in Paragraph 14 of Plaintiff's Complaint, the allegations are not directed at Vigilnet such that no response is required. To the extent a response is deemed required, Vigilnet is without sufficient information to either admit or deny the allegations and on that basis denies the allegations.

FACTUAL ALLEGATIONS

15.

Answering the allegations in Paragraph 15 of Plaintiff's Complaint, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet admits

that on or around October 7, 2022 Carlos Jimenez-Vargas was arraigned on a District Attorney's Information in Washington County Circuit Court on case number 22CR48727. Answering further, Vigilnet admits that the documents pertaining to the release of Carlos Jimenez Vargas from pre-trial custody, issued by Washington County Circuit Court in Oregon criminal case number 22CR48727, State of Oregon v. Carlos Jimenez Vargas, speak for themselves. Except as admitted, Vigilnet denies the remaining allegations against it in Paragraph 15.

16.

Answering the allegations in Paragraph 16 of Plaintiff's Complaint, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet admits that on or around October 14, 2022, Carlos Jimenez-Vargas was arraigned on an indictment in Washington County Circuit Court in case number 22CR48727. Answering further, Vigilnet admits that the documents pertaining to the release of Carlos Jimenez Vargas from pre-trial custody, issued by Washington County Circuit Court in Oregon criminal case number 22CR48727, State of Oregon v. Carlos Jimenez Vargas, speak for themselves. Except as admitted, Vigilnet denies the remaining allegations against it in Paragraph 16.

17.

Answering the allegations in Paragraph 17 of Plaintiff's Complaint, Vigilnet admits that the phrase "expert in providing electronic monitoring and other services aimed at increasing public safety" appears on its website. Except as admitted, Vigilnet denies the allegations in Paragraph 17.

18.

Answering the allegations in Paragraph 18 of Plaintiff's Complaint, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet admits that it was never informed of any exclusion zones or addresses for Carlos Jimenez-Vargas. Except as admitted, Vigilnet denies the remaining allegations directed against it in Paragraph 18.

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19.

Answering the allegations in Paragraph 19 of Plaintiff's Complaint, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet admits that it reports violations as required in the terms of the operative contracts with the entities with which Vigilnet contracts. Except as admitted, Vigilnet denies the remaining allegations against it in Paragraph 19.

20.

Answering the allegations in Paragraph 20 of Plaintiff's Complaint, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet admits that the GPS monitor of Carlos Jimenez-Vargas indicated his presence at 23885 SW Scholls Ferry Road, in Hillsboro, Oregon for 14 minutes on November 14, 2022. Vigilnet further admits that this was not part of any exclusion zone or address provided to Vigilnet at any time, nor was Vigilnet aware that this was the residence of Gabriela Jimenez. Vigilnet denies the remaining allegations directed against it in Paragraph 20.

21.

Answering the allegations in Paragraph 21 of Plaintiff's Complaint, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet admits that the GPS monitor of Carlos Jimenez-Vargas indicated his presence at 23885 SW Scholls Ferry Road, in Hillsboro, Oregon for 50 minutes on November 16, 2022. Vigilnet further admits that this was not part of any exclusion zone or address provided to Vigilnet at any time, nor was Vigilnet aware that this was the residence of Gabriela Jimenez. Vigilnet further admits, on information and belief, that Carlos Jimenez-Vargas shot and killed Lenin Rosas and Gabriela Jimenez on November 16, 2022. Except as admitted, Vigilnet denies the remaining allegations against it in Paragraph 21.

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FIRST CLAIM FOR RELIEF

Civil Rights Claim – 14th Amendment – 42 USC § 1983 Wrongful Death Does 1-10

22.

Vigilnet incorporates by reference its answer and denials to Paragraphs 1 through 21 as set forth herein.

23.

Answering the allegations in Paragraph 23 of Plaintiff's Complaint, including subparts, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet denies the allegations against it in Paragraph 23.

24.

Answering the allegations in Paragraph 24 of Plaintiff's Complaint, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet denies the allegations against it in Paragraph 24.

25.

Answering the allegations in Paragraph 25 of Plaintiff's Complaint, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet denies the allegations against it in Paragraph 25.

26.

Answering the allegations in Paragraph 26 of Plaintiff's Complaint, Vigilnet denies the allegations.

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SECOND CLAIM FOR RELIEF

Civil Rights Claim – 14th Amendment – 42 USC § 1983 Monell Claims - Wrongful Death

**Vigilnet America LLC, LMG Holdings, Inc. dba SCRAM Systems, Washington County,
Washington County Community Corrections, Washington County Sheriff's Office,
Washington County Circuit Court, Oregon Judicial Department, and State of Oregon**

27.

Vigilnet incorporates by reference its answer and denials to Paragraphs 1 through 26 as set forth herein.

28.

Answering the allegations in Paragraph 28 of Plaintiff's Complaint, including subparts, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet denies the allegations against it in Paragraph 28.

29.

Answering the allegations in Paragraph 30 of Plaintiff's Complaint, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet denies the allegations against it in Paragraph 30.

30.

Answering the allegations in Paragraph 31 of Plaintiff's Complaint, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet denies the allegations against it in Paragraph 31.

31.

Answering the allegations in Paragraph 32 of Plaintiff's Complaint, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet denies the allegations against it in Paragraph 32.

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32.

Answering the allegations in Paragraph 33 of Plaintiff's Complaint, Vigilnet denies the allegations.

33.

Answering the allegations in Paragraph 34 of Plaintiff's Complaint, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet denies the allegations against it in Paragraph 34.

34.

Answering the allegations in Paragraph 35 of Plaintiff's Complaint, Vigilnet denies the allegations.

THIRD CLAIM FOR RELIEF

Civil Rights Claim – 14th Amendment – 42 USC § 1983

SUPERVISORY LIABILITY – WRONGFUL DEATH

Vigilnet America LLC, LMG Holdings, Inc. dba SCRAM Systems, Washington County, Washington County Community Corrections, Washington County Sheriff's Office, Washington County Circuit Court, Oregon Judicial Department, and State of Oregon

35.

Vigilnet incorporates by reference its answer and denials to Paragraphs 1 through 35 as set forth herein.

36.

Answering the allegations in Paragraph 37 of Plaintiff's Complaint, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet denies the allegations against it in Paragraph 37.

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37.

Answering the allegations in Paragraph 38 of Plaintiff's Complaint, including subparts, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet denies the allegations against it in Paragraph 38.

38.

Answering the allegations in Paragraph 39 of Plaintiff's Complaint, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet denies the allegations against it in Paragraph 39.

39.

Answering the allegations in Paragraph 40 of Plaintiff's Complaint, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet denies the allegations against it in Paragraph 40.

40.

Answering the allegations in Paragraph 41 of Plaintiff's Complaint, Vigilnet denies the allegations.

FOURTH CLAIM FOR RELIEF

Negligence

Vigilnet America LLC, LMG Holdings, Inc. dba SCRAM Systems, Washington County, Washington County Community Corrections, Washington County Sheriff's Office, Washington County Circuit Court, Oregon Judicial Department, and State of Oregon

41.

Vigilnet incorporates by reference its answer and denials to Paragraphs 1 through 41 as set forth herein.

42.

Answering the allegations in Paragraph 43 of Plaintiff's Complaint, including subparts, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet denies the allegations against it in Paragraph 43.

43.

Answering the allegations in Paragraph 44 of Plaintiff's Complaint, including subparts, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet denies the allegations against it in Paragraph 44.

44.

Answering the allegations in Paragraph 45 of Plaintiff's Complaint, Vigilnet denies the allegations.

FIFTH CLAIM FOR RELIEF

Gross Negligence/Reckless Conduct – Wrongful Death

Vigilnet America LLC, LMG Holdings, Inc. dba SCRAM Systems, Washington County, Washington County Community Corrections, Washington County Sheriff's Office, Washington County Circuit Court, Oregon Judicial Department, and State of Oregon

45.

Vigilnet incorporates by reference its answer and denials to Paragraphs 1 through 45 as set forth herein.

46.

Answering the allegations in Paragraph 47 of Plaintiff's Complaint, including subparts, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet denies the allegations against it in Paragraph 47.

47.

Answering the allegations in Paragraph 48 of Plaintiff's Complaint, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet denies the allegations against it in Paragraph 48.

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48.

Answering the allegations in Paragraph 49 of Plaintiff's Complaint, to the extent the allegations are not directed at Vigilnet, no response is required. Answering further, Vigilnet denies the allegations against it in Paragraph 49.

49.

Answering the allegations in Paragraph 50 of Plaintiff's Complaint, Vigilnet denies the allegations.

PRAYER FOR RELIEF

Vigilnet denies the allegations in Plaintiff's Prayer for Relief, including all subparts.

AFFIRMATIVE DEFENSES

50.

Vigilnet reasserts its responses to the allegations in Paragraphs 1 through 50 and Prayer for Relief in Plaintiff's Complaint and reincorporates the same herein. Vigilnet reserves the right to rely upon the following affirmative defenses to the claims asserted in Plaintiff's Complaint to the extent supported by the evidence later developed or facts later learned, without now assuming the burden of proof on any such defense that would otherwise rest with Plaintiff, and with the reservation of its right to amend or supplement its responses to Plaintiff's Complaint, as well as Vigilnet's affirmative defenses, as information is gathered in discovery.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

51.

Plaintiff has failed to state a claim upon which relief can be granted.

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SECOND AFFIRMATIVE DEFENSE

(Comparative Fault)

52.

Plaintiff's damages, if any, were caused in whole or in part by Plaintiff's own fault, in ways that will be revealed in discovery.

THIRD AFFIRMATIVE DEFENSE

(Fault of Others)

53.

Plaintiff's damages, if any, are due to the fault of other third parties over whom Vigilnet had no control and is not responsible.

FOURTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

54.

Plaintiff has failed to mitigate her damages, if any.

FIFTH AFFIRMATIVE DEFENSE

(Offset)

55.

Vigilnet is entitled to offset or reduction in the amount of any judgment against them to the extent that Plaintiff has received or will receive payment from others for the same damages.

SIXTH AFFIRMATIVE DEFENSE

(Intervening/Superseding Acts)

56.

If any loss or damage was suffered by Plaintiff as prayed for in the Complaint, then said loss may have been caused or contributed to by intervening and/or superseding acts over which Vigilnet had no control or responsibility.

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SEVENTH AFFIRMATIVE DEFENSE

(Statute of Limitations/Statute of Ultimate Repose/Laches)

57.

Plaintiff's claims are barred by the applicable statutes of limitations and/or ultimate repose or by the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE

(Waiver/Estoppel/Unclean Hands)

58.

Plaintiff's claims are barred by the doctrines of waiver, estoppel, and/or unclean hands.

NINTH AFFIRMATIVE DEFENSE

(Incorporation of Affirmative Defenses of Other Defendants)

59.

Where applicable, Vigilnet incorporates the affirmative defenses raised by other Defendants in this matter.

TENTH AFFIRMATIVE DEFENSE

(Reservation of Rights)

60.

Vigilnet reserves the right to amend this pleading to add or remove affirmative defenses and to allege counterclaims as discovery progresses and warrants.

PRAYER FOR RELIEF

WHEREFORE, having fully responded to Plaintiff's Complaint, Defendant Vigilnet America LLC prays for judgment as follows:

1. Dismissal with prejudice all of Plaintiff's claims against Vigilnet;
2. Awarding Vigilnet its costs and disbursements incurred in this matter; and

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3. Any other award for such relief as the Court deems just, equitable, and proper.

DATED this 7th day of May, 2024.

GILBERT LEVY @ BRIDGEPORT
THE GLB ATTORNEYS

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